

DECISION NOTICE

For

Proposed Grant Marsh Wildlife Management Area Addition

Region 5 Habitat Montana Proposed Land Project



***Montana Fish,
Wildlife & Parks***

*Montana Fish, Wildlife & Parks
2300 Lake Elmo Drive, Billings, MT 59105*

March 9, 2017

BACKGROUND, DESCRIPTION OF PROPOSED ACTION AND ALTERNATIVES

Montana Fish, Wildlife and Parks (FWP) proposes to purchase by fee title approximately 425 acres of predominantly riparian land along the Bighorn River north of Hardin, Montana to be managed as part of the Grant Marsh Wildlife Management Area (WMA). The property is in private ownership and is currently listed for sale.

The purchase, development, and management of this site would enhance the functionality and broaden the conservation “footprint” of the WMA while facilitating multiple types of public recreational opportunities. The funding for this proposed project would, in part, be derived from the 2013 Habitat Montana spending authorization, which allows for fee title and other types of acquisition. U.S. Fish and Wildlife Service Pittman-Robertson dollars and other partner contributions may also be available to support this proposed purchase.

In proposing to acquire this addition, FWP seeks to address the following needs:

- To protect and/or enhance riparian, native grassland and shrub land habitats.
- To provide high quality wildlife habitat, such as annual food/cover plots.
- To prevent subdivision of important wildlife habitat including almost two miles of Bighorn River shoreline.
- To provide public recreational access to an additional 425 acres of land and two miles of river frontage.

Alternative A: No Action

Under the No Action Alternative, FWP would not purchase the property. The landowner would continue to seek another buyer. There would be no assurance the land would be managed for wildlife or that public access would be provided in perpetuity.

Alternative B: Proposed Action

FWP proposes to purchase approximately 425 acres to manage as part of the adjacent Grant Marsh WMA. Through the Proposed Action, FWP would secure permanent public access to this land and an additional reach of the Bighorn River. Management efforts would include protecting and enhancing the riparian community and actively managing existing agricultural land to benefit wildlife.

PUBLIC COMMENT

In compliance with Montana Environmental Policy Act (MEPA), FWP completed an Environmental Assessment (EA) with a subsequent public involvement process. Public participation is not a plebiscite to measure those in favor of or opposed to a proposal, but is a mechanism for agencies to consider substantive comments.

The public comment period for this EA opened on January 24, 2017. The proposed acquisition was featured in news articles done by the Billings Gazette staff covering various aspects of the project on January 29 and February 6, 2017 and the Bighorn County News February 9 and February 23, 2017. A public meeting was held on February 13, 2017 at the Region 5 Headquarters in Billings and at the County Extension Office in Hardin on February 16, 2017 to answer questions and collect oral and written comments. Hard copies of the EA were available to all who attended the meeting. The comment period closed on February 24, 2017. The draft EA was available on the FWP website under Public Notices

(http://fwp.mt.gov/news/publicNotices/environmentalAssessments/acquisitionsTradesAndLeases/pn_0194.html), or by calling (406)247-2940 and a hard copy of the EA was available at the Region 5 Headquarters (2300 Lake Elmo Drive, Billings, MT). The draft EA was mailed to the usual government agencies, non-government organizations, local legislators and county commissioners.

Written comments were received via email or handwritten letters from 49 individuals and/or parties. Twenty individuals provided oral comments at public meetings, one individual provided oral comment via a telephone call. The Billings and Hardin public meetings each had 14 participants. Of these 70 public comments 65 were in support of the acquisition, two were neutral and three were opposed.

This Decision Notice addresses several concerns and issues raised during the public input process. It is important to note that this EA covers only the acquisition of the property and initial management actions. Any substantial changes in future management will be subject to additional environmental analysis and public comment.

FWP's responses to public inquiries or concerns are summarized below. All public comments in full can be found in the Appendix on the FWP website (www.fwp.mt.gov) under public notices. The Appendix also includes a copy of new releases and related articles. The Environmental Assessment can also be found at the FWP website.

CORRECTIONS TO THE EA

On page 10 of the EA FWP stated that the landowner would retain oil and gas rights to the property, however this is incorrect. Those rights would be transferred to FWP if the property is purchased.

On page 18 of the EA FWP erroneously named Two Leggins Water Users' Association as the company supplying irrigation water to the proposed Grant Marsh Addition in the EA. The correct supplier is the Bighorn Low Line Ditch Company. The EA also stated that the annual assessment for this service would be paid as part of FWP's annual property tax bill, when in fact a separate, additional payment would be made to the Bighorn Low Line Ditch Company

DECISION

Purchase of the proposed 425-acre Grant Marsh WMA Addition will maintain this property in open space while providing for public enjoyment of this landscape. Given the high value placed on Bighorn River recreational properties, if this property is not purchased by FWP, it is likely that either subdivision or exclusive access interests will acquire the property, and opportunities for habitat protection and public enjoyment of this landscape could be lost.

After review of this proposal and the Environmental Assessment, and listening to and addressing comments made by the public, as well as considering the significant public support for this project, it is my decision to proceed with acquiring the property known as the Grant Marsh Addition from JTX Properties and Darell & Robin Tunnickliff, subject to approval by the FWP Commission and the Montana Board of Land Commissioners. As such, I select Alternative B - Proposed Action, as identified in the EA. Through the Proposed Action, FWP would secure public access to 425 acres on this property including approximately 2 miles of Bighorn River shoreline. The project will conserve animal and plant species biodiversity and important wildlife habitats that exist on these lands, including riparian, native grasslands, and native shrub lands.

The draft version of the EA, this Decision Notice, and the draft Management Plan serve as the final documents for this proposal.



03/09/2017

Barb S. Beck
Region 5 Supervisor
Billings, MT

Date

RESPONSE TO PUBLIC COMMENTS

Public comments have been summarized under issue headings that reflect the comments received, and are followed by FWP's responses. All public comments can be found in the Appendix on the FWP website (www.fwp.mt.gov) under public notices. The EA can also be found on FWP's website.

Written comments, via email or handwritten, were received from 49 individuals and/or parties. Twenty individuals provided oral comments at public meetings, 14 individuals attended each of the two public meetings, and a phone call was received from one individual. Of these 70 public comments 65 were in support of the acquisition, two were neutral and three were opposed.

IN SUPPORT OF PREFERRED ALTERNATIVE

We are supportive of FWP following the Preferred Alternative, and continuing negotiations to acquire the Grant Marsh Addition.

FWP agrees that the proposed Grant Marsh Addition, located seven miles north of Hardin along the west bank of the Bighorn River, represents a significant land acquisition opportunity for wildlife habitat and public recreation. The proposed purchase is intended to protect and enhance important wildlife habitat, including nearly two miles of Bighorn River shoreline, from subdivision or development, and to provide recreational access to an additional 425 acres of public land and habitat.

ROAD CONDITIONS

There are ruts in the road, there is one-way traffic. They're not maintained, they're not taken care of at all.

Roads at FWP WMAs and Fishing Access Sites (FASs) are graded on an as needed basis. They are not maintained for winter travel. There are no public roads to be maintained on the property proposed for acquisition.

PARKING

If you buy this property I'd like to see you go in 50 yards or whatever and make a parking spot. Eventually you would have a lot of people parking along that highway.

If FWP purchases the additional acreage, parking areas, in addition to the existing Grant Marsh WMA parking area, will be developed.

WEED MANAGEMENT

You haven't done anything to control weeds. All that ground that they disturbed along where they put fence line in, they never seeded a damn thing. It's nothing but solid kochia all the way through there and with Grant Marsh it's the same way. There are weeds all over that. You say you are going to manage that the same way, it's going to be the biggest mess there ever was. The Russian olives are plum out of control. That area you are talking about buying is nothing but Russian olive. Russian olives are

noxious weeds in Montana. How do you deal with the Russian olives since you said they are not a native? The Russian olive thing really needs to be taken care of. It's killing the cottonwoods.

The disturbed ground where the new fence was put in is currently under private ownership and not under FWP's control. Kochia and Russian olive are not considered noxious weeds in the state of Montana. Russian olives are common and widespread in the Bighorn River Valley and have not been shown to kill cottonwoods. Weed control at the existing Grant Marsh WMA and FAS are currently managed under the auspice of the Statewide Noxious Weed Management Plan. FWP compiles and submits through Bighorn County, a biennial report outlining weed control activities for all FWP properties in the county, to the State Weed Coordinator (Department of Agriculture) in accordance with MCA 7-22-2151. If the proposed action is selected, and a successful sale completed, FWP would assess the property for weeds, and modify the existing plan to include the additional acreage. Weed management will involve using techniques that will have minimal impacts to fish and wildlife habitat.

CATTLE GRAZING

The only issue I have is the statement "Cattle may be grazed on the new property of acquired by FWP, but only as a management tool to benefit wildlife habitat". This individual asked when we were going to get off the bandwagon that wildlife needs domestic grazing in order to survive and questions how native species ever survived before the introduction of domestic grazing.

FWP recognizes appropriate livestock grazing management as a tool to improve wildlife habitat. In this case, FWP would use prescriptive livestock grazing only if deemed necessary to improve wildlife habitat.

PROPERTY VALUE AND FUNDING FOR PROPOSAL

I think you are giving him way too much money. The asking price for this property is exceedingly high, and is not a good investment for FWP. Montana is broke anyway. They hollering about being broke and here we spend \$1.572? The federal government is broke we are 19 trillion dollars debt. It's all taxes and it comes out of our pockets. I just think you are putting money there that could be used for another game warden down here.

The proposed property would be purchased at the fair market value of \$1,572,000 as determined by a Uniform Standards for Federal Land Acquisitions Appraisal. Given the relatively high value placed on Bighorn River recreational properties, if this property is not purchased by FWP, it is likely that the current owner could sell the property for more than the appraised value.

The funding for this project is from earmarked sources, to include the sale of Montana hunting licenses and federal Pittman-Robertson excise taxes on firearms and ammunition, and cannot be used for purposes other than wildlife habitat and management.

PUBLIC SAFETY

High powered rifles down there with housing as close as it is around that whole property, even the present area is a big issue. If they aren't watching which direction they're shooting they're going to end up killing somebody down there. The thing about it is with all that brush and everything you got down there you can't see a lot of those houses. That could be changed to a 12 or 20-gauge slug which is not going to travel like a high-powered rifle.

The existing Grant Marsh WMA/FAS is comprised of 141 acres with no weapons restrictions since acquisition in 1978. To FWP's knowledge there have been no incidents or previous complaints regarding public safety and rifle hunting at this location. FWP has not received requests from local landowners to restrict the use of rifles for hunting on or near the existing WMA. Weapons restrictions reduce recreational opportunities and the ability to control wildlife numbers through hunting. Weapons restrictions may have a negative impact on local agricultural production.

NAMING OF PROPERTY

It would be an appropriate and honorable thing to name/rename it to honor Buck and Shirley James. They were lifelong residents of Big Horn County. It is common for roads and places in the area to be named after long time families.

The proposed acquisition would be an addition to the existing Grant Marsh WMA and therefore there would not be a name change. FWP policy guidelines also state "...not to rename a recreation area after a person, living or dead, unless this person has made a significant contribution to Montana's recorded history". Grant Marsh WMA and FAS is named after a famous river boat captain that piloted steamboats in the area in the mid-1800s.

NATURAL FLOODING

It gets flooded every three years. It's called Grant Marsh for a reason. You are going to lose the access road by the end of this year where that river is cutting in. There hasn't been anything done to prevent erosion in that corner.

The property is in the floodplain of the Bighorn River and is subject to natural processes that may include periodic flooding. Periodic flooding does not reduce the value of the property as wildlife habitat. The erosion issue is on the existing FAS, and is being evaluated by FWP Fisheries staff to determine what, if any, measures should be taken.

FLOODING FROM ADJACENT PROPERTY

The southwest corner of the property, that FWP is considering purchasing, has a portion of it under water a significant portion of the irrigation season, which renders that portion of the property unfit for any use. The irrigation waste water from the property immediately south of the property, adjacent to Hwy 47, flows onto the property. The area where there are trees gets filled up with water. The property east of Hwy 47 (the barrow pit area) fills up, the culvert under the approach is filled, with all this water flowing north to where a culvert is located under the highway. There the water pools

until the culvert is filled and then flows over onto the property west of the Hwy 47. The irrigation waste water that flows across the property is not supposed to travel onto the property west of the Hwy 47 and it appears that the current landowner has not taken any steps to protect his property from his neighbors' flooding. This problem has already resulted in legal action. If, in the future, irrigation waste water flows across the property and onto the property west of Hwy 47, additional legal action could result and it is possible FWP could become involved if it owned the property now owned by this private landowner.

FWP has contacted the person who provided this information for clarification, and it is apparent that the issue was between two landowners not affiliated with this project. FWP appreciates the information, but this does not affect FWP's decision to acquire the property.

ANNUAL WATER USE ASSESSMENT

FWP made an incorrect statement on page 17, item 10b of the EA. It says that the Two Leggins water users annual assessment is included in the tax bill. This is incorrect. The company that supplies water to this ground is the Bighorn Low Line Ditch Company. The Company bills its annual assessment directly to its stockholders. The stockholders pay the Bighorn Low Line Ditch Company directly. This is not included in the tax bill. The Valley Center Drainage District is the district that provides drainage ditches to carry irrigation water back to the river. Their assessment is included in the taxes. If FWP does not pay its tax bill or annual irrigation assessment or makes life difficult for the drainage district when it tries to clean one of their drainage ditches than the other landowners have to pick up the slack.

Regarding property taxes, pursuant to Section 87-1-603, MCA, the Department will pay to Big Horn County a sum equal to the amount of taxes that would be payable on the county assessment if the property were in private ownership.

FWP erroneously named Two Leggins Water Users' Association as the company supplying irrigation water to the proposed Grant Marsh Addition in the EA. The correct supplier is the Bighorn Low Line Ditch Company. The EA also stated that the annual assessment for this service would be paid as part of our annual property tax bill, when in fact a separate, additional payment would be made to the Bighorn Low Line Ditch Company. In addition to payments there would be a habitat technician helping to maintain irrigation control structures.

TRAPPING

FWP must not allow commercial trapping on this land, nothing should ever be allowed that exploits our wildlife for profit.

FWP understands that not all citizens support trapping, however FWP recognizes regulated trapping as an effective research and management tool for furbearers and other wildlife. FWP also recognizes the importance of trapping to the lifestyles of many individuals, providing economic and recreational opportunities for outdoorsmen and

women. FWP will continue to allow regulated trapping on the existing WMA and FAS, as well as the new acquisition.

POTENTIAL DNRC ISLAND OWNERSHIP

FWP has reviewed the letter sent by Montana Department of Natural Resources & Conservation (DNRC) dated February 24. It appears that due to a shifting river channel since the GLO survey was completed in 1906, DNRC may have a claim of ownership to the new river bed that crosses the property. However, the proposed property to be acquired may have gained land adjacent to Government Lots 2 and 6 in Section 15 due to accretion. Although the land configuration has changed as a result of river dynamics over time, any change in acres of the property to be acquired appears to be minimal. Additionally, FWP recognizes that any future islands formed up out of the river bed are owned by DNRC. FWP will continue to work with DNRC to address any ownership issues, however based on the DNRC letter it appears that the public would see no change in the management of these lands.